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Oceans and the law of the sea

Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its fifth meeting

Letter dated 29 June 2004 from the Co-Chairpersons of the Consultative Process addressed to the President of the General Assembly

Pursuant to General Assembly resolutions 54/33 of 24 November 1999 and 57/141 of 12 December 2002, we were reappointed as the Co-Chairpersons of the fifth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. We now have the honour to submit to you the attached report on the work of the Consultative Process at its fifth meeting, which was held at United Nations Headquarters from 7 to 11 June 2004.

In accordance with paragraph 3 (h) of General Assembly resolution 54/33 of 24 November 1999, and bearing in mind General Assembly resolutions 58/240 and 58/14 in relation to oceans and the law of the sea, the fifth meeting agreed to a number of recommendations to be suggested to the General Assembly for consideration under its agenda item "Oceans and the law of the sea", as set out in part A of the present report. A summary of the discussions held during the fifth meeting is presented in part B of the report. Part C contains additional issues that have been proposed for inclusion in the list of issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea (see report of the Consultative Process at its fourth meeting, A/58/95, part C).

We kindly request that the present letter and the report of the Consultative Process be circulated as a document of the fifty-ninth session of the General Assembly under the agenda item "Oceans and the law of the sea".

(*Signed*) Felipe H. **Paolillo** and Philip D. **Burgess**
Co-Chairpersons

* A/59/50 and Corr.1.

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Part A

Agreed recommendations to be suggested to the General Assembly for consideration under its agenda item entitled "Oceans and the law of the sea"

1. The fifth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (the Consultative Process) met from 7 to 11 June 2004 and, pursuant to General Assembly resolution 58/240, organized its discussions around the following area "New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction".

2. The period since the fourth meeting of the Consultative Process has seen increasing levels of concern expressed by many States, scientists and several non-governmental organizations over ineffective conservation and management of the biodiversity of the seabed beyond national jurisdiction. This is a part of the ocean environment that remains largely unexplored but contains, on the basis of current knowledge, areas rich in unique and diverse species and ecosystems, with high levels of endemism and in some instances with a relationship to the non-living resources of the Area.

3. It was proposed that the General Assembly:

(a) Welcome the establishment of a new inter-agency coordination mechanism, the Oceans and Coastal Areas Network (UN-Oceans), on issues relating to oceans and coastal issues called for in resolution 57/141 of 12 December 2002, and note its terms of reference;

(b) Urge the close and continuous involvement in UN-Oceans of all relevant United Nations programmes, funds and specialized agencies and other organizations of the United Nations system and welcome the participation of international financial institutions, relevant intergovernmental and other organizations, as well as the International Seabed Authority, and secretariats of multilateral environmental agreements.

4. There have been a number of calls, including by the General Assembly in its resolutions 57/141 and 58/240, for, inter alia, urgent consideration of ways to integrate and improve, on a scientific basis and in accordance with international law, the management of risks to the marine biodiversity of seamounts, deep sea cold-water coral reefs and certain other underwater features beyond national jurisdiction. Hydrothermal vents should also be considered.

5. Noting the call in the Plan of Implementation of the World Summit on Sustainable Development to maintain the productivity and biodiversity of important and vulnerable marine and coastal areas both within and beyond national jurisdiction, it was proposed that the General Assembly:

(a) Welcome decision VII/5 adopted at the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity; and

(b) Also welcome decision VII/28 adopted at the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity suggesting that the Ad Hoc Open-Ended Working Group on Protected Areas explore options for

cooperation to promote the establishment of marine protected areas beyond national jurisdiction, consistent with international law, including the United Nations Convention on the Law of the Sea, and on the basis of the best available scientific information, and encourage the participation of oceans experts in the Working Group.

6. It was proposed that the General Assembly:

(a) Urge States, either by themselves or through regional fisheries management organizations, where these are competent to do so, to consider on a case-by-case basis and where justified on a scientific basis, including the application of precaution, the interim prohibition of destructive practices by vessels under their jurisdiction that have an adverse impact on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold-water corals located beyond national jurisdiction;

(b) Encourage regional fisheries management organizations with a mandate to regulate bottom fisheries to urgently address the impact of deep sea bottom trawling on vulnerable marine ecosystems in accordance with international law;

(c) Urge members of regional fisheries management organizations without the competence to regulate bottom fisheries to expand the mandate, where appropriate, of their organizations to cover such activities in accordance with international law;

(d) Agree to review within two years progress on action taken in response to these requests with a view to further recommendations, where necessary;

(e) Reiterate its call to States to ratify or accede to and effectively implement the relevant United Nations agreements and, where appropriate, associated regional fisheries agreements or arrangements, noting in particular the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and to comply with the 1995 Code of Conduct for Responsible Fisheries of the Food and Agriculture Organization of the United Nations; and

(f) Emphasize again its serious concern that illegal, unreported and unregulated fishing remains one of the greatest threats to marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources, and renew its call to States to fully comply with all existing obligations and to combat such fishing through relevant regional and subregional fisheries management organizations and arrangements, and to urgently take all necessary steps to implement the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing adopted by the Committee on Fisheries of the Food and Agriculture Organization of the United Nations (FAO).

7. It was proposed that the General Assembly:

(a) Welcome progress on and encourage the work of the International Seabed Authority relating to the regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area and procedures to ensure the effective

protection of the marine environment, the protection and conservation of the natural resources of the Area and the prevention of damage to its flora and fauna from harmful effects that may arise from activities in the Area; and

(b) Encourage States, individually or in collaboration with each other or with relevant international organizations and bodies, to improve their understanding and knowledge of the deep sea in areas beyond national jurisdiction by increasing their marine scientific research activities in accordance with the Convention.

8. It was proposed that the General Assembly:

Reiterate the necessity for capacity-building, as expressed in resolutions 57/141, 58/240 and 58/14.

9. It was proposed that the General Assembly:

Note the potential for gas hydrates as one source for energy development, as well as the associated risks, and encourage States and, where appropriate, the International Seabed Authority and the international scientific community to continue to cooperate in deepening the understanding of the issues and in investigating the feasibility, methodology and safety of its extraction from the seabed, its distribution and its use.

10. It was proposed that the General Assembly:

(a) Welcome the report of the Consultative Group on Flag State Implementation (A/59/63) and request that the document be widely disseminated;

(b) Also welcome progress made by the International Maritime Organization (IMO) on the development of a voluntary IMO member State audit scheme in such a manner so as not to exclude the possibility in the future of its becoming mandatory;

(c) Further welcome the consideration by IMO of the invitation extended to it in resolutions 58/240 and 58/14 to study, examine and clarify the role of the "genuine link" in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels;

(d) Request the Secretary-General, in cooperation and consultation with relevant agencies, organizations, offices and programmes of the United Nations system, as well as other relevant organizations, taking into account developments since the preparation of the report contained in document A/59/63, to further elaborate relevant matters referred to in resolution A/58/14, paragraph 22, and part VIII of resolution A/58/240, including the "genuine link" and the consequences of non-compliance with the duties and obligations of flag States prescribed in the relevant international instruments; and

(e) Encourage relevant international organizations to further develop ideas to devise means of increasing the financial costs to owners and operators of non-compliance with these duties and obligations.

11. It was proposed that the General Assembly:

Welcome the progress of regional cooperation in some geographical areas and of global cooperation with IMO, aimed at combating piracy and armed robbery at sea, by adopting appropriate measures, including those relating to assistance with capacity-building, and call upon States to give urgent attention to promoting,

concluding, adopting and implementing cooperation agreements at the regional level in high risk areas.

12. Under the item "Cooperation and coordination on ocean issues", statements were made by representatives of IMO, FAO, the secretariat of the Convention on Biological Diversity, the International Hydrographic Organization, the International Union for the Conservation of Nature and Natural Resources, as well as by the International Commission for the Conservation of Atlantic Tunas on areas of focus discussed at previous meetings and on area of focus of the present meeting of the Consultative Process. The International Maritime Organization made a submission on the strengthening of flag State implementation (A/AC.259/11). In addition, statements were made by the International Chamber of Shipping, the International Transport Workers' Federation on behalf of Friends of the Earth International, Global Witness, Greenpeace, the International Confederation of Free Trade Unions and World Wide Fund for Nature, and by Conservation International on behalf of the Natural Resources Defense Council, World Wide Fund for Nature, Oceana, Marine Conservation Biology Institute, New England Aquarium, Royal Forest and Bird Protection Society of New Zealand, the Environmental Careers Organization, PRETOMA, Fundacion Jatun Sacha, International Collective in Support of Fishworkers, Centro Mexicano de Derecho Ambiental, the Antarctic and Southern Ocean Coalition and Greenpeace.

Part B

Co-Chairpersons' summary of discussions

Agenda item 1
Opening of the meeting

13. The discussions at the first and the second plenary sessions of the fifth meeting of the Consultative Process were based on the annual report of the Secretary-General on oceans and the law of the sea (A/59/62), as well as on other documents before the meeting, including the report of the Consultative Group on Flag State Implementation (A/59/63), a letter circulated by Australia (A/AC.259/12) and a submission by IMO (A/AC.259/11).

14. The overall legal framework for the discussions was provided by the Convention and its two Implementing Agreements,[1] while chapter 17 of Agenda 21 provided the programme of action for the sustainable development of oceans and seas, which was emphasized in decision 7/1, adopted by the Commission on Sustainable Development at its seventh session, in 1999, and in the Johannesburg Plan of Implementation.

15. The meeting was opened by the Co-Chairpersons of the fifth meeting, Ambassador Paolillo and Mr. Burgess, who noted that General Assembly resolution 58/240 recommended that, in its deliberations on the report on oceans and the law of

[1] Agreement relating to the Implementation of part XI of the United Nations Convention on the Law of the Sea and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

the sea of the Secretary-General, the Consultative Process should organize its discussions around the area of "New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction". They also pointed out that the Assembly had decided to convene an international workshop with representatives from all interested parties, in conjunction with the fifth meeting of the Consultative Process, to further consider and review the draft document on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects.

Agenda item 2
Approval of the format of the meeting and adoption of the agenda

16. Mr. Paolillo presented the proposals of the Co-Chairpersons for the format and for the annotated provisional agenda of the fifth meeting (A/AC.259/L.5) and suggested minor adjustments to the timetable. As a result of the informal consultations preceding the meeting,[2] and in the absence of any objections, the format and the annotated provisional agenda were adopted by consensus.

Agenda item 3
Outcome of the meeting of the Group of Experts on the global assessment

17. Mr. David Pugh, elected Chairman of the Group of Experts on the regular process for the global reporting and assessment of the state of the marine environment, including socio-economic aspects, reported on the outcome of the Group of Experts meeting held in New York from 23 to 26 March 2004. Mr. Pugh recalled that the mandate of the Group stemmed from General Assembly resolution 58/240, paragraph 64 (a), which had requested the Secretary-General to convene a group of experts to draft a document with details on the scope, general framework and outline of the regular process, peer review, secretariat, capacity-building and funding. The Group of Experts, which included representatives of States and representatives from intergovernmental organizations and non-governmental organizations, including scientists and policy makers, produced document A/AC.271/WP.1, presented to the International Workshop on the global assessment for consideration and review.

18. The International Workshop met to consider and review document A/AC.271/WP.1 from 8 to 11 June 2004. The Workshop also had before it documents A/AC.271/WP.2 and Add.1, containing comments on A/AC.271/WP.1 sent by States, intergovernmental organizations and non-governmental organizations. The report of the Workshop is contained in document (A/59/...).

[2] Informal consultations were held on 12 March 2004.

Agenda item 4
Cooperation and coordination on ocean issues

19. Mr. Qazi Shaukat Fareed, Director of the Secretariat of the United Nations System Chief Executives Board for Coordination, informed the meeting that, in September 2003, the Board's High-Level Committee on Programme, had approved the creation of an Oceans and Coastal Areas Network (OCAN, subsequently changed to UN-Oceans), building upon the former Subcommittee on Oceans and Coastal Areas and in line with the Board's call for a more dynamic arrangement, leaving it possible for non-United Nations actors to contribute to the achievement of the Johannesburg Plan of Implementation targets in accordance with the agreed criteria, which were transparent and balanced. The terms of reference and work programme of UN-Oceans had been prepared by an ad hoc task group of concerned organizations and other stakeholders and approved at the Committee's intersessional meeting held from 31 May to 1 June 2004.

20. Mr. Patricio A. Bernal, Executive Secretary of the Intergovernmental Oceanographic Commission of UNESCO, said that UN-Oceans was composed of the relevant programmes, bodies and specialized agencies of the United Nations system, secretariats of financial institutions, such as the World Bank, secretariats of the relevant United Nations global environmental conventions, such as the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change, as well as the International Seabed Authority. In addition, other organizations had expressed an interest in the work of the Network, such as the International Hydrographic Organization, the Organization for Economic Cooperation and Development, in particular its Fisheries Division, and the Ramsar Convention on Wetlands.

21. He enumerated the following terms of reference of UN-Oceans: (a) strengthening coordination and cooperation of United Nations activities related to oceans and coastal areas; (b) reviewing the relevant programmes and activities of the United Nations system, undertaken as part of its contribution to the implementation of the Convention, Agenda 21 and the Johannesburg Plan of Implementation; (c) identification of emerging issues, the definition of joint actions and the establishment of specific task teams to deal with these, as appropriate; (d) promoting the integrated management of oceans at the international level; (e) facilitating, as appropriate, the inputs to the annual report on oceans and the law of the sea of the Secretary-General; and (f) promoting the coherence of United Nations system activities on oceans and coastal areas with the mandates of the General Assembly, and the priorities contained in the Millennium Development Goals, the Johannesburg Plan of Implementation and of governing bodies of all members of UN-Oceans.

22. Mr. Bernal explained that UN-Oceans would facilitate inter-secretariat coordination across the United Nations system and related institutions as well as provide, through time-bound, targeted task forces, the platforms for integrating into its work, organizations outside the United Nations system, representing civil society, non-governmental organizations and others. It was also to provide follow-up to issues being raised through the Consultative Process and addressed by the United Nations General Assembly, as well as to the set of goals adopted in the Johannesburg Plan of Implementation. He reported that there had been a preliminary

discussion as to the potential task forces that might be set up for coordination purposes.

23. During the debate, several delegations welcomed the establishment of UN-Oceans and the inclusion of institutions that had not been involved in the Subcommittee, like the International Seabed Authority and the secretariats of multilateral environmental conventions. They stated that UN-Oceans and all other mechanisms of coordination should operate through regular reviews of oceans and sea issues involving the responsible institutions, with a view to avoiding gaps and duplication of work. It should address specific issues by establishing special task forces. It was proposed that the terms of reference of UN-Oceans should be focused on issues the international community had already agreed upon. One delegation underlined that UN-Oceans should not be asked to deal with subjects on which there was no international consensus, as this would divert it from its mandate and burden it with political issues that went beyond its powers. It was also emphasized that UN-Oceans had been established as an inter-agency coordinating mechanism for issues relating to oceans and seas within the United Nations system to function within the mandate set out in General Assembly resolution 58/240.

24. Another delegation proposed that UN-Oceans report on challenges, progress, gaps and plans so as to provide context for and anchor key panel items, in advance of panel discussions at the Consultative Process.

25. Several delegations suggested that UN-Oceans should facilitate the global assessment process, possibly through a formal and stable form of cooperation. One delegation submitted that a task force on high seas biodiversity should be established under UN-Oceans. Another delegation listed some issues that could benefit from improved coordination: illegal, unreported and unregulated fishing, marine pests and coral reef management.

Agenda item 5
General exchange of views on areas of concern and actions needed, including on issues discussed at previous meetings

26. Several delegations noted that the Consultative Process had facilitated and strengthened coordination and cooperation on issues of global oceans governance and had promoted an integrated approach to these issues.

A. Report of the Secretary-General

27. Delegations expressed their general appreciation for the annual report of the Secretary-General on oceans and the law of the sea and noted its comprehensive and informative nature. It was also noted, however, that the report did not contain the traditional parts on marine scientific research and settlement of disputes and that these subjects should be addressed in the addendum to the main report. Also, owing to their importance, regional fisheries arrangements should receive wider coverage in the report.

28. Referring to the parts of the report dealing with the monitoring of developments with respect to implementation of the Convention and deposit of charts or lists of geographical coordinates showing straight baselines and maritime limits, several delegations stated that States should implement the relevant

provisions of the Convention and make appropriate deposits with the Secretary-General. In addition, States should ensure that their national legislation was in conformity with the Convention. A concern was expressed regarding the analysis presented in paragraph 12 (b) of the report. With regard to paragraph 20, some delegations reiterated their position that States that are not parties to the Convention are not legally bound by the Convention. It was pointed out by some delegations that they did not concur with the analysis contained in paragraph 42 of the report, for example, regarding the establishment of zones other than the exclusive economic zone. It was noted that zones, such as ecological protection zones, had been established, especially in semi-enclosed seas, for economic and geopolitical reasons and represented a middle-ground approach in conformity with the Convention.

Commission on the Limits of the Continental Shelf

29. An opinion was expressed that the work of the Commission should be transparent to the extent possible and that there was a need for information-sharing and an exchange of views and experiences among States with regard to the preparation of submissions.

Capacity-building

30. The representative of the Nippon Foundation of Japan informed the meeting about the trust fund project agreement concluded with the Division for Ocean Affairs and the Law of the Sea and the Department of Economic and Social Affairs of the Secretariat, which is aimed at providing capacity-building and human resource development assistance to developing coastal States parties and non-parties to the Convention through academic and fellowship opportunities. The major objective of the project was to provide advanced education and training in the field of ocean affairs and the law of the sea or related disciplines to government officials and other mid-level professionals from developing coastal States so that they could obtain the necessary skills to assist their countries in formulating a comprehensive ocean policy and in implementing the legal regime set out in the Convention.

Strengthening of flag State implementation

31. The representative of IMO highlighted the work his organization had undertaken in the field of safety of navigation and prevention of marine pollution. Recent developments included the projected entry into force of annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) in May 2005, the adoption of a new International Convention for the Control and Management of Ships' Ballast Water and Sediments in February 2004, the decision to accelerate the phasing-out of single-hull tankers, as well as the recent adoption of a Protocol regulating a substantial increase in the financial limits of compensation to be paid to victims of oil pollution damage by the International Oil Pollution Compensation Fund.

32. He stated that the IMO submission in document A/AC.259/11 referred to the many global instruments in force and to the strong policy stand which the IMO membership had taken, and was taking, concerning the effective implementation of the organization's global standards. The primary responsibility for the implementation of those instruments lay with the flag State; its obligations were the

counterpoint to the provision in article 91 of the Convention, which acknowledged the right of every flag State to fix the conditions for the granting of nationality and for the right to fly its flag. A secondary enforcement mechanism, namely port State control, ensured through eight regional Memoranda of Understanding, established a common framework for the inspection of ships. With regard to the threats of terrorism to commercial shipping and ports, and as regards safety management, IMO placed obligations directly on the operators of ships.

33. With reference to the role and the responsibilities of a flag State, the representative of IMO noted the promulgation of a series of IMO implementation guidelines. He also referred to the development of a draft IMO Code that would incorporate the obligations of member States and was expected to become mandatory. That initiative was in line with decision 7/1 of the Commission on Sustainable Development, which had proposed that IMO should develop binding measures to ensure that all flag States should comply with the international rules and standards, so as to give full and complete effect to the Convention. The draft Code, expected to be adopted by the IMO Assembly in 2005, should be associated with a high political priority initiative for the IMO membership, namely the voluntary IMO member State audit scheme. The scheme will help to promote the organization's instruments and standards by assessing how effectively member States were implementing and enforcing the relevant Conventions and standards and by providing participants in the scheme with feedback and advice on their current procedures. The scheme was currently envisaged as voluntary, but there were expectations that it would become mandatory.

34. In connection with the invitation by the General Assembly to IMO and other agencies to study, examine and clarify the role of the genuine link in relation to the duties of flag States, the representative of IMO informed the meeting that the IMO Council would consider at its June 2004 session how best it should respond to this request. In connection with the question of the "genuine link" as associated with the concept of "ownership" of a vessel, he referred to the IMO submission in A/AC.259/11, in which it was noted that the issue of defining responsibility for the implementation of IMO Conventions had arisen in two very specific circumstances and both had recognized the weakness of targeting the "owner" of a ship. One concerned the implementation of the International Safety Management Code. This placed very specific responsibilities on the operator, not the owner, of a vessel to institute a range of safety management plans, both on ship and on shore. Similarly, in the context of his organization's response to threats posed by terrorism to commercial shipping and to ports, IMO had developed an International Ship and Port Facility Security Code, which placed the obligation on the operator of the ship to put in place security measures.

35. The IMO Council would consider the General Assembly mandate in the context of its own policy instruments and the machinery that it had established to promote enforcement of standards and obligations. In the light of the Council's conclusions the Secretary-General of IMO would consult with his United Nations colleagues.

36. Several delegations, as well as the International Chamber of Shipping and Human Rights Watch, stressed that the flag State had the primary responsibility to both implement and enforce relevant international norms and standards. Such responsibility stemmed from articles 91 to 94 of the Convention, and — for fishing

vessels — from Part V of the United Nations Fish Stocks Agreement, the FAO Compliance Agreement, as well as from the FAO Code of Conduct.

37. Many delegations and non-governmental organizations expressed appreciation for the report of the Consultative Group on Flag State Implementation, which also contained a list of obligations of flag States under the Convention and other international instruments. Several delegations suggested including in the list of obligations the duties of flag States to prevent the proliferation of weapons of mass destruction.

38. Several delegations highlighted the benefits derived from effective implementation of existing norms and standards on the part of flag States and expressed concerns regarding the effects of non-compliance. Similar concerns were expressed with regard to the growing use of flags of convenience, and, in particular, the practice of re-flagging and flag-hopping, by which ship owners avoided compliance with international rules and practices by flying the flags of States that did not exercise the necessary controls over the activities of their vessels.

39. The representative of the Chamber underlined that even though shipping companies had the primary responsibility for the operation of their ships, flag State implementation and enforcement was the key to the elimination of sub-standard vessels. Governments should focus on the successful development of the voluntary IMO member State audit scheme. The Chamber welcomed the effort undertaken by the International Labour Organization (ILO) to consolidate all existing maritime labour instruments into a simpler instrument, which would prove easier to ratify, implement and enforce. For this reason, the shipping industry was directly involved in the ILO tripartite process. The Chamber representative renewed the commitment of the shipping industry to high standards of performance and, in this regard, informed the meeting that the Chamber had issued Shipping Industry Guidelines on Flag State Performance, which were available on its web site.

40. In a joint statement, a group of non-governmental organizations (Friends of the Earth International, Global Witness, Greenpeace, International Confederation of Free Trade Unions, International Transport Workers' Federation and World Wildlife Fund) noted that the failure of flag States to implement and enforce their obligations facilitated the abuse of the human rights of seafarers, fishers, migrants and refugees; illegal, unreported and unregulated fishing; environmental damage including pollution and the destruction of rare and vulnerable marine ecosystems, species and communities; and provided a permissive environment for illegal trafficking in weapons, drugs, and people. The group also pointed out that illegal, unreported and unregulated fishing, facilitated by ineffective flag State control, hampered many developing countries' ability to establish profitable fisheries sectors and to achieve food security. The representative of Human Rights Watch drew attention to the consequences of ineffective flag State implementation on the problem of arms trafficking and, in turn, on human rights abuses as well as on smuggling and terrorism.

41. The group noted that, in the absence of a "genuine link", a flag State could not exercise effective control over vessels flying its flag and that existing gaps in governance had been exploited by substandard operators and groups engaged in illicit activity. Human Rights Watch said that the difficulty of tracing the actual owner of a vessel or cargo was a major problem, especially in connection with the use of flags of convenience. In addition, the lack of a "genuine link", evidenced by

the fact that ship owners were often not required to keep assets, employees or offices in the territory of their flag State rendered it materially difficult to enforce measures against them. The group recommended that a joint IMO/ILO/FAO/OECD/UNCTAD committee be established to examine and clarify the role of the "genuine link" in both merchant shipping and illegal, unreported and unregulated fishing. The group also called for a comprehensive study of the potential consequences of non-compliance with the obligations prescribed in the relevant international instruments.

42. It was underlined by some delegations that the "genuine link" was directly related to the capacity of the State to exercise its jurisdiction in an effective manner over the vessel and that there was a need to examine and clarify the role of the "genuine link" in relation to the duties of flag States. Other delegations and the representative of the International Chamber of Shipping voiced their concern that examination and clarification of the role of the "genuine link" might prove time-consuming and not effective. In their view efforts should be focused on improving the performance of flag States. The aim should not be the elaboration of new rules or criteria for the qualification of vessels for registration purposes, but rather the strengthening of the implementation mechanisms that were already in place.

Piracy and armed robbery at sea

43. The growing threat posed by piracy and armed robbery to commercial and other ships was addressed by some delegations. They urged all coastal and port States to ensure protection from piracy and armed robbery in waters under their jurisdiction. One delegation informed the meeting that the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia had been finalized in November 2003, in Tokyo, and was a unique example of a regional multilateral agreement for combating piracy. Other interested States were urged to proceed with the formalities to adopt the Agreement. In this context, the importance that the General Assembly attached to the conclusion of regional cooperation agreements in high-risk areas was recalled.

Electronic nautical charts, hydrographic services and capacity-building

44. The representative of the International Hydrographic Organization highlighted the activities carried by that organization for improving the protection of vulnerable ecosystems and biodiversity in areas beyond national jurisdiction. The organization provided timely and accurate hydrographic services that enhanced the security of navigation and consequently reduced the dangers of adverse environmental consequences caused by collisions or groundings. This was made possible through up-to-date nautical charts produced in a uniform format on which traffic separation schemes were depicted. The use of electronic navigational charts within electronic chart display and information systems further enhanced the security of navigation. He pointed out that maritime safety information was also critical to safety of navigation and the protection of the marine environment. It provided meteorological warnings and other urgent safety messages to mariners through a network of radio stations and satellite broadcasts. The organization was very active in building hydrographic service capacity in developing coastal States, and especially in small island developing States that did not have the means to fulfil their obligations under the International Convention for the Safety of Life at Sea.

45. The representative explained that his organization had established a standard depiction for Special Areas and Particularly Sensitive Sea Areas, designated under the International Convention for the Prevention of Pollution from Ships, on both paper and electronic nautical charts. The organization had also established a framework for registering measurements for mapping activities carried out under the General Bathymetric Chart of the Oceans project, available also in digital format. He concluded by recalling that his organization had been coordinating the activities of national hydrographic offices for over 80 years and was now focused on capacity-building to ensure that hydrographic services were available globally.

Fisheries governance and illegal, unreported and unregulated fishing

46. The representative of the Food and Agriculture Organization of the United Nations said that wide ranging efforts at the national, regional and global levels should be undertaken in order to minimize decreasing productivity of resources caused by increasing levels of fishing effort and detrimental environmental impacts, and to ensure that fisheries continued to contribute to food supply and to provide employment opportunities in both developing and developed countries.

47. He underscored that a clear set of unambiguous rules was critical for the application of a sound and responsible ecosystem approach to fisheries and for the concurrent promotion of international cooperation in marine affairs. On the basis of the Convention, FAO had encouraged and continued to encourage States to, inter alia, accede to and implement the FAO Compliance Agreement and the United Nations Fish Stocks Agreement, as well as to ensure the implementation of the FAO Code of Conduct and FAO International Plans of Action. He expressed his organization's concern over the lack of concrete steps taken to ensure the effective application of these instruments and plans, despite national commitments. This situation was caused by a variety of reasons, most importantly by the lack of technical and financial capacity and administrative hurdles.

48. Regarding future events, the FAO representative recalled that the twenty-sixth session of the Committee on Fisheries would meet in March 2005 and would consider the outcomes of several Technical Consultations to be held during 2004. Those Consultations should: (a) review the progress and promote the full implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the International Plan of Action for the Management of Fishing Capacity; (b) consider the effects of subsidies on fisheries resources as well as on illegal, unreported and unregulated fishing and on fleet overcapacity; and (c) review port State measures to combat illegal, unreported and unregulated fishing. The Committee on Fisheries should also review efforts by FAO members to implement the FAO Code of Conduct based on information obtained through a self-assessment questionnaire in order to identify and address difficulties.

49. The FAO representative also noted the work of existing regional fishery management organizations in the implementation of the United Nations Fish Stocks Agreement as well as the establishment of organizations on the basis of new instruments, such as the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, which entered into force on 13 April 2003, and the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, to enter into force on 19 June 2004. Those organizations closed previously existing gaps in fisheries management.

50. Regarding illegal, undocumented and unreported fishing, the FAO representative recalled a series of recent regional workshops organized by FAO to assist countries to develop national plans of action to combat illegal, undocumented and unreported fishing and the convening by FAO, in cooperation with the Government of the United States, of an Expert Consultation on Fishing Vessels Operating Under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing (September 2003). The report of the Consultation should be considered by the June 2004 Technical Consultation to Review Progress and Promote the Full Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Undocumented and Unreported Fishing and the International Plan of Action for the Management of Fishing Capacity.

51. As an issue that might be considered by the Consultative Process at a future session, the FAO representative proposed the problems of derelict fishing gear. He pointed out that discarded or lost fishing gear was carried by ocean currents and deposited on reefs and beaches far from the original fishing area. Such gear represented a threat to the environment and safety at sea. The fishing industry should be called upon to adopt recycling technologies to reduce the quantity of debris discarded or lost at sea during fishing operations and countries should again consider the implementation of the recommendations of the 1991 FAO Expert Consultation on the Marking of Fishing Gear.

52. The Executive Secretary of the International Commission for the Conservation of Atlantic Tunas noted, among other things, that at its eighteenth regular session the Commission had adopted instruments related to the reinforcement of capacity-building aimed at improving the submission of basic statistics to support the Commission's efforts to combat all forms of illegal, undocumented and unreported fishing in its Convention area and to consolidate compliance with its conservation and management measures.

53. Underscoring the need for a solid scientific foundation, which constituted a fundamental base for the conservation of Atlantic tunas and tuna-like species by the Commission, and for good quality and reliable data, he drew attention to the 2003 Commission resolution on improvements in data collection and quality assurance. Other recommendations adopted by the Commission were aimed at reinforcing the monitoring of contracting party fleets.

54. Several delegations pointed out that illegal, undocumented and unreported fishing and reflagging of fishing vessels continued to be a problem resulting in increased pressure on world fisheries. Some noted that the forthcoming review conference of the United Nations Fish Stocks Agreement provided opportunities for the evaluation of the effectiveness of the regime and for measures that could lead to increased participation in the Agreement.

55. Some States also provided examples of control they exercise directly or through the regional fishery management organizations in order to eradicate illegal, undocumented and unreported fishing. For example, one delegation reported on its efforts that had resulted in the scrapping of more than 100 vessels sailing under foreign flags that had engaged in illegal, undocumented and unreported fishing. Those efforts had also resulted in a trade-related initiative introduced last year, based on the record ("positive list") of fishing vessels that complied with the conservation and management measures adopted by the relevant fisheries

organizations. Only fish caught by vessels whose names were included on that list were allowed to be brought to the market.

Area of focus

56. The area of focus, "New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction", was discussed in depth in the discussion panel, as well as in discussions under agenda item 5. The summary of discussions is set out below following the respective panel presentations. The complete texts of the panel presentations have been posted on the Division for Ocean Affairs and the Law of the Sea of the United Nations Secretariat web site at www.un.org/Depts/los.

57. The panel presentations on the area of focus were preceded by information provided by the representative of the secretariat of the Convention on Biological Diversity on the outcome of the seventh session of the Conference of the Parties to the Convention, held in Malaysia from 9 to 27 February 2004. It was pointed out that the Conference had adopted a number of decisions of relevance to the Consultative Process. The decisions sought to respond to commitments in the Johannesburg Plan of Implementation and to the relevant elements of General Assembly resolution 58/240.

58. Decision VII/5 of the seventh session of the Conference of the Parties to the Convention extended by an additional six years the Convention's programme of work on marine and coastal biodiversity. It also refined that programme to take into account recent developments and new priorities. Its programme elements included the implementation of integrated marine and coastal area management; marine and coastal living resources; marine and coastal protected areas; mariculture; and invasive alien species. In addition, the programme, including its annexes, contained work plans on coral bleaching and on physical degradation and destruction of coral reefs; elements of a marine and coastal biodiversity management framework; research priorities, including research and monitoring projects associated with marine and coastal protected areas; and research and monitoring priorities associated with mariculture. It also provided guidance to parties regarding the development of a national marine and coastal biodiversity framework and addressed the need for the improvement of available data for assessing progress towards the global goal of establishing marine protected areas, including representative networks, by 2012.

59. The Convention representative pointed out that the decisions of the seventh session of the Conference of the Parties to the Convention contained significant elements concerning the establishment of marine protected areas beyond national jurisdiction. Areas such as seamounts, hydrothermal vents, cold-water corals and other vulnerable ecosystems were given special attention. The Conference also established an Ad Hoc Open-ended Working Group on Protected Areas and adopted its programme of work. The terms of reference of the Working Group included exploring options for cooperation for the establishment of marine protected areas in marine areas beyond national jurisdiction, consistent with international law, including the United Nations Convention on the Law of the Sea, and based on scientific information.

60. The Convention on Biological Diversity representative stated that follow-up activities of the Convention secretariat based on the mandate provided by the seventh session of the Conference of the Parties to the Convention would include,

for example, development of solid scientific and legal background information on the establishment of marine protected areas beyond national jurisdiction for the meeting of the Working Group.

61. The seventh session of the Conference of the Parties to the Convention also addressed the issue of conservation and sustainable use of deep seabed genetic resources beyond national jurisdiction and requested the Executive Secretary, in consultation with parties, other Governments and the International Seabed Authority, and in collaboration with secretariats of international organizations, such as the Division for Ocean Affairs and the Law of the Sea of the United Nations Secretariat, the United Nations Environment Programme and the International Oceanographic Commission of UNESCO to compile information on the methods for identification, assessment and monitoring of deep seabed genetic resources in areas beyond the limits of national jurisdiction; and compile and synthesize information on their status and trends, including identification of threats to such genetic resources and the technical options for their protection.

62. Finally, as for the precautionary and ecosystem approaches, the seventh session of the Conference of the Parties to the Convention called upon the General Assembly and relevant international and regional organizations "to urgently take the necessary short-term, medium-term and long-term measures to eliminate/avoid destructive practices, consistent with international law, on a scientific basis, including the application of precaution, for example, consideration on a case-by-case basis, of interim prohibition of destructive practices adversely impacting the marine biological diversity" associated with seamounts, hydrothermal vents, and cold-water corals.

(a) Panel presentations

63. The Panel presentations began with a documentary on "Volcanoes of the deep sea", followed by presentations by Mr. Peter Rona and Mr. Kim Juniper on the description of the ecosystems of the deep seabed and impacts thereto.

64. Mr. Rona (Institute of Marine and Coastal Sciences, Rutgers University) explained that ocean basins are poor containers for the ocean. The sea floor was full of fractures and in most places the heavy, cold, dense sea water penetrated through these fractures, and sank down through the ocean lithosphere and was reassimilated back into the earth's interior. In certain places where there were hot molten rocks or magma, sea water travelled kilometres down through volcanic rocks of the ocean crust. It was heated as it flowed near those hot rocks, expanded and became lighter and buoyantly rose through those fractures in the oceanic crust and was chemically active. It rose and where it cooled and mixed with the surrounding sea water, both beneath and on the sea floor, it deposited metals and discharges from the sea floor as black smoker vents. At sea floor spreading centres those hot rocks, cooled, solidified and accreted to either side of a submerged volcanic mountain range. The spreading rate was a few centimetres per year. There was an unusual assemblage of organisms in those vents. In total darkness, they survived by chemosynthesis. The fauna was therefore extremely unique. Because of their chemosynthetic nature, the unusual biota found in those environments was being investigated, inter alia, as potentially useful in the disposal of heavy metals and other metal processing applications, as well as DNA finger printing and pharmaceuticals for cancer cures.

65. Mr. Juniper (University of Quebec) explained that a dense population of microscopic biological communities exists at 2,500 metres depth, in pitch darkness, at 120 degrees C and under very heavy pressure. It included new forms of life, such as giant tube worms, which grow about as high as a human being in a shell-like casing that is composed of the same material as fingernails. There were also clams growing to exceptionally large sizes in an environment where hot spring discharges were enriched with hydrogen sulphide, which was poisonous to other forms of life. The clams and worms, due to a high level of haemoglobin in their blood extracted oxygen from the toxic environment and survived. In addition, micro-organisms living in symbiosis with clams and worms had tremendous value and would help in studies relating to the survival of species in toxic environments and the possibility of developing artificial human blood from these species. However, repeated visits to the sites and sampling would affect the survival of those species. It was erroneous to assume that the vent communities demonstrated the ability to re-establish themselves at severely disturbed sites as long as there were hydrothermal emissions to pport microbial chemosynthesis. Hydrothermal vent communities were found along the axis of the East Pacific rise, mid-Atlantic ridge, along the northern coast of Spain, and within the exclusive economic zones of some Pacific islands. Polymetallic sulphides, rich in iron, copper, and zinc, gold and silver, occurred in those vents. Mr. Juniper mentioned that the Steering Committee of the Inter-Ridge Workshop was currently considering a voluntary code of conduct for the scientific exploration of hydrothermal vent sites.

66. Mr. Satya Nandan (Secretary-General of the International Seabed Authority) made a presentation on benthic biodiversity and the work of the International Seabed Authority covering the past, the present and the future. While the Authority's role was primarily concerned with prospecting and exploration of mineral resources, it also had a broader role concerning the protection and preservation of the marine environment as provided in articles 143 and 145 of the Convention. Accordingly, the Legal and Technical Commission of the Authority had issued recommendations as guidelines for contractors describing in detail the procedures required for acquiring baseline data and monitoring the impact on the marine environment as a result of exploration activities in the Area. At its recently concluded tenth session, the Commission had completed the draft regulations for prospecting and exploration of polymetallic sulphides and cobalt-rich crusts and submitted them to the Council of the Authority for consideration. The draft regulations also contained extensive provisions on the protection and preservation of the marine environment where such resources were found. The Authority would hold a workshop in September 2004 with a view to developing procedures required for acquiring baseline data and monitoring the impact on the marine environment in the exploration of those resources. He also stated that the Authority was in a position to provide standardized recommendations for carrying out prospecting and marine scientific research in the Area. In this context he referred to the collaborative work that the Authority was engaged in with the scientific community. He highlighted the Authority's responsibility to promote and encourage marine scientific research in the Area for the benefit of mankind and to coordinate and disseminate the results of such work, as well as its responsibility to ensure that work carried out as marine scientific research did not compromise any of the standards required from contractors. In this regard he welcomed the work carried out by a group of researchers within the InterRidge organization to develop a voluntary code

of conduct, which could form the basis for any guidelines or recommendations produced by the Authority.

67. In her presentation on high seas bottom fisheries and their effects on vulnerable deep sea ecosystems and biodiversity, Ms. Lisa Speer (Natural Resources Defence Council) pointed out that deep-sea fisheries operations were conducted with the use of bottom-net trawls, which were unselective and could take a large amount of by-catch of non-target and associated species. They were also highly destructive to marine ecosystems and were known to damage seamounts, coral reefs and other critical underwater habitats. She stressed that many deep-sea species were long-lived and slow-growing and they might not recover from a serial or sequential depletion as a result of high seas bottom trawling. She also added that high seas bottom-trawling operations were largely unregulated. They represented 0.5 per cent of the total marine capture fisheries worldwide on an annual basis and only 11 countries were responsible for 90 per cent of deep-sea catches.

68. Ms. Speer suggested that a moratorium should be imposed by the General Assembly on high seas bottom trawling, as a short-term measure in line with the precautionary approach, until a legal framework ensuring the long-term conservation of deep-sea marine living resources could be agreed upon by the international community. As regards areas under the national jurisdiction, she noted that some coastal States have already banned bottom trawling on vulnerable marine ecosystems.

69. In his presentation on scientific observations in the deep-sea and related technologies for the next generation, Mr. Kazuhiro Kitazawa (Japan Marine Science and Technology Centre) indicated that biologists could not explain the patterns of distribution of marine species on the sea bottom. Current studies were only focusing on cataloguing discovered new species. Biologists were also concerned over the high rate of disappearance of a number of species as a result of anthropogenic activities. In this connection, Mr. Kitazawa described new technology developments for the monitoring of deep-sea areas through the use of submarine cables. In particular, he illustrated how such cables, installed on the seabed for purposes as different as seismographic or telecommunications, could in turn be utilized to acquire further knowledge of deep-sea species. Starting in the late 1990s, scientists from Japan and the United States of America had used decommissioned telecommunication cables present on the ocean floor to develop an observation network for rapid environmental assessment and physical/biological forecasting in coastal waters. Such a network was integrated through the use of satellites, aircraft, surface ships, fixed or re-locatable moorings for telemetry and autonomous underwater vehicles. Mr. Kitazawa stressed the importance of generating synergies with a view to creating standard formats and data that could allow a productive interaction among the various scientific groups involved in the field, which had the potential to shed light on the dynamics and structure of the earth, plate dynamics, natural resources, geo-hazardous events, such as earthquakes and tsunamis, heat and material exchanges and circulation through the oceans and the dynamics of microbiological or ecological processes and others from the deep ocean to its surface.

70. Ms. Edith Allison (Office of Natural Gas and Petroleum Technology, United States Department of Energy) in her presentation on gas hydrates: a future ocean resource explained that gas hydrates were ice-like crystals formed at depths in the

ocean from natural gas (methane) and water, in which water molecules formed a rigid lattice compressing and constraining methane molecules. Each volume of the crystalline cage hosted 164 volumes of methane. Ninety-nine per cent of methane hydrates were biogenic (formed by microbial activity in the upper several hundred metres of shelf sediment) in origin; about 1 per cent was thermogenic (formed by the breakdown of oily substances at great depths). Methane hydrates were formed in cold temperatures (4° C) and moderately high pressure zones 200 to 300 metres below land surface or at 400 metres of water depth. Arctic and continental shelves were sources of methane hydrates but some estimates foresaw deposits in all oceans, except the Persian Gulf and the North Sea, which were too shallow for their formation.

71. As methane hydrates were sometimes found as deposits within sediments, as opposed to the rock strata of oil and gas wells, extraction could be a problem. Rapid release of the hydrates or even a measured extraction could cause sediments to shift, which could trigger underwater landslides, thereby endangering pipeline or communications cables laid on the ocean floor. The processes and methodologies of extraction had to be studied further. As was the case with hydrothermal vents, gas hydrate deposits had specialized biota associated with them, such as crabs, tube worms and mussels. Apart from their high energy content, hydrates were also a source of fresh water, which could be extracted as the hydrate ice crystals already excluded most salts. Each 10 volumes of hydrate contained 8 volumes of fresh water. Experiments had also been tried using the injection of methane into 100 to 200 metre deep water to create artificially formed methane hydrates whose desalinated ice crystals could be extracted for fresh water, thereby avoiding the sediment contamination common in subsurface hydrate deposits. Ms. Allison stated that the United States, Japan, Canada, India and the European Union were currently engaged in gas-hydrate research. It was estimated that the methane hydrate fields could contain up to twice the amount of energy of the world's known hydrocarbon deposits (oil, natural gas and coal).

72. Mr. John Stegeman (Biology Department, Woods Hole Oceanographic Institution) in his presentation on biotechnology and practical uses of marine genetic resources explained that the oceans contained the majority of the earth's 10 to 100 million species, but most had not yet been discovered, much less described, nor was their potential use known either. The current research into oceanic genetic resources could be divided into the following areas: (a) pharmaceutical: anti-viral, anti-inflammatory and anti-cancer agents; (b) bimolecular materials, such as the composition and production processes of the glue "threads" a mussel used to cling to rocks, which was already being commercially used as a water resistant glue; (c) the growth processes of the nanno spicules (millionths of an inch spikes) contained in the bodies of sponges, which might have applications in the growing of nanno-level silicon microchips for the electronics industry; (d) proteins from an organism that made it unique — Arctic/Antarctic fish had an antifreeze gene that could be implanted into tomatoes to make them frost resistant, or the marsh minnow that was totally resistant to dioxin; and (e) materials used in biological/biomedical research — an enzyme used to identify DNA, genes that facilitated high temperature reactions, or the green florescence of a jellyfish gene that, when attached to another being researched, allowed the site of reactions to be pinpointed physically in a plant or animal. It was pointed out that most biological resources of interest to researchers were not limited to only one geographical area of the world's oceans, but could

usually be found in several places. The identification of interesting genetic resources came from: incidental observation (basic research); and directed research — bioprospecting for something interesting even when its potential application was not known. The commercial applications usually followed many years after the initial research.

(b) Summary of discussions in the panel and in the plenary

73. During the discussions it was underlined by several delegations that improved understanding of the ocean environment was a pre-condition for more effective ocean governance, as acknowledged by the Johannesburg Plan of Implementation. Another important goal of the Plan was the establishment of the ecosystem approach by 2010.

74. It was pointed out that efforts aimed at the conservation of biodiversity should take place within the globally accepted framework of the United Nations Convention on the Law of the Sea and the Convention on Biological Diversity. Delegations highlighted the urgency of implementing decision VII/5 of the seventh session of the Conference of the Parties to the Convention on Biological Diversity, in particular as it related to ways and means to conserve and manage biological diversity in areas beyond national jurisdiction. It was also emphasized that threats to biodiversity should be addressed on the basis of the precautionary and ecosystem approaches. It was proposed that, given the different circumstances that existed in different areas around the world, the international community should be guided first by the need to identify vulnerable areas and assess, on a case-by-case basis, the action required.

75. It was generally agreed that high seas bottom trawling was harmful to deep-sea marine biodiversity and had adverse effects on vulnerable marine ecosystems, such as seamounts and cold and deep water corals. The need for improved governance of deep-sea fisheries resources and better protection of deep-sea vulnerable marine ecosystems and associated biodiversity was underlined. It was pointed out that high seas bottom trawling represented also an immediate and pressing threat to marine biodiversity and ecosystems within exclusive economic zones, since almost half the seamounts and a substantial percentage of deepwater corals and other sensitive ecosystems were situated inside areas under national jurisdiction.

76. Several delegations referred to the role that could be played by regional fisheries management organizations to address high seas bottom trawling. Some delegations indicated that only a limited number of such organizations had competence to regulate such fishing, but nothing would prevent others in the future to do so. They indicated also that some of the organizations covered species and geographic areas that would allow them to adopt measures to protect vulnerable marine ecosystems, both inside and outside areas of national jurisdiction. Other delegations stressed that it was important to call on those organizations that had the mandate to regulate bottom trawling to use that mandate to address the question.

77. With respect to the suggestion that the General Assembly should adopt a moratorium for high seas bottom trawling as an interim measure for the conservation of deep-sea biodiversity until a lasting solution could be devised by the international community, some delegations and a number of non-governmental organizations were sympathetic to the suggestion but other delegations opposed a global moratorium on high seas bottom trawling. They indicated that a global

moratorium would put unnecessary restrictions on the interests of the fishing industry. They also raised questions regarding enforcement of the legal regime of the high seas. They also raised concerns regarding the scope of the proposed restrictive measures and how those measures would be balanced with States' rights and obligations on the high seas. They considered that any ban should be part of a larger regime for the conservation of high seas marine living resources, including the critical role of regional fisheries management organizations in addressing bottom trawling.

78. Some delegations indicated that, should a moratorium be retained, a time-bound region-by-region ban or an area-by-area ban would be preferable to a global moratorium on bottom trawling to avoid unnecessary restrictions on areas where bans were not justified and to minimize hardship on fishers. Such bans could be lifted on a regional basis once efficient conservation and management measures were implemented. The same delegations pointed out that temporary closure for fisheries management purposes were already accepted widely as tools in sustainable fisheries management and were provided in the United Nations Fish Stocks Agreement.

79. Other delegations said that the imposition of a global moratorium on high seas bottom trawling by the General Assembly was inappropriate before adequate marine scientific research was conducted for a better understanding of the state of deep-sea marine ecosystems, especially vulnerable marine ecosystems such as seamounts. Those delegations emphasized instead the key roles that FAO and relevant regional organizations should play in the conservation and sustainable use of fishery resources and the protection of deep-sea biodiversity. In this respect, they suggested that a recommendation be forwarded to the General Assembly calling for a strengthening of collaboration between FAO and regional fisheries management organizations, on the one hand, and States, on the other, to assess the impacts of bottom trawling on the biodiversity of vulnerable marine ecosystems and identify the areas that needed appropriate action.

80. The representative of FAO informed the meeting of the initiatives that his organization had undertaken in the framework of its mandate, for example, the recommendation by the Committee on Fisheries during its twenty-fifth session in February 2003 that deep sea fisheries should be included in the agenda of the next Committee session. Moreover, FAO had co-sponsored with Australia and New Zealand the Deep Sea Conference in New Zealand in December 2003.

81. He said that information was one of the areas where action was most urgently required. Much was uncertain or undocumented about what was happening in deepwater fisheries, especially in the high seas. The problem was compounded by the fact that many high-sea deepwater fisheries were small and most were fished by only a few boats, often only one or two from a particular country. That situation raised practical difficulties. For instance, in such cases, national legal protection requirements governing the confidentiality of data that, if released, would identify the activities of single companies or individuals, had prevented operations data from becoming available for resource management purposes. FAO, on account of the nature and scope of its mandate and experience, could play a useful role in putting together the relevant information, gathering it from a variety of sources, analysing and disseminating it. It could also promote and stimulate production and sharing of

that information as well as assist its member countries and other stakeholders in the process.

82. Some delegations noted that bottom trawling was not the only threat to the conservation and management of biodiversity of the high seas. They also indicated that illegal, undocumented and unreported fishing constituted a threat to high seas marine biodiversity. More effective governance of fishing activities was emphasized. The United Nations Fish Stocks Agreement, the FAO Compliance Agreement and FAO Code of Conduct were cited as crucial instruments for high seas fisheries management. The Commission for the Conservation of Antarctic Marine Living Resources was mentioned as a model of an effective biodiversity conservation regime covering areas within and beyond national jurisdiction with an explicit ecosystem management focus. The adoption of an integrated approach to all threats to biodiversity was advocated.

83. Several delegations made specific proposals for the conservation and management of marine biodiversity beyond national jurisdiction, including: (a) addressing scientific and legal gaps in the conservation and management of high sea biodiversity; (b) providing direction and substance to the debate on the governance of high seas marine biodiversity; and (c) identifying further options for progress. These suggestions included: the convening of an intergovernmental conference on deep-sea fishing on the high seas by the General Assembly to identify gaps in governance and scientific knowledge, and to provide a forum for negotiating and promoting the implementation of long-term measures necessary to protect and preserve rare and fragile ecosystems as well as the habitat of depleted, threatened or endangered species; the initiation of an intergovernmental process by the General Assembly to identify existing gaps regarding governance and scientific knowledge; and the establishment of a task force on high seas biodiversity under the aegis of UN-Oceans.

84. Some delegations indicated that there were already a range of other measures that should be considered to address the conservation of deep-sea biodiversity and vulnerable marine ecosystems. Existing measures included conservation measures agreed through regional fisheries management organizations; the application of the precautionary approach and the implementation of an ecosystem approach; the establishment of marine protected areas; and the closure to fishing of specific areas during specific seasons. Other existing policy and legal frameworks that could provide protection to high seas biodiversity and deep-sea vulnerable marine ecosystems, included the United Nations Convention on the Law of the Sea, the Convention on Biological Diversity, the United Nations Fish Stocks Agreement, the FAO Compliance Agreement and the FAO Code of Conduct, as well as other regional instruments and mechanisms.

85. Others stressed the importance of action at the national level, especially with regard to adherence to and implementation of existing instruments, regimes and standards in order to strengthen national resource and environmental management. Several delegations provided information on the conservation measures they had adopted at the national level to protect marine biodiversity and vulnerable marine ecosystems, including the prohibition of bottom trawling in various areas under their national jurisdiction or on the high seas through the exercise of flag State jurisdiction.

86. Other delegations said that if new international instruments needed to be adopted by the international community to address the gap in the conservation of high seas marine biodiversity and associated ecosystems, such instruments should be elaborated within the legal framework of the United Nations Convention on the Law of the Sea, through an implementing agreement. The Agreement on part XI and the United Nations Fish Stocks Agreement could serve as precedents in that regard. One delegation, however, pointed out that whatever new tools might be developed, they should be flexible enough to address unexpected discoveries or developments that could arise as the international community learned more about the deep sea and associated biodiversity.

87. Given the difference of views, delegations were unable to recommend the adoption by the General Assembly of a global moratorium on high seas bottom trawling, or the setting up of a group of experts or intergovernmental process to identify and address the gap in existing governance arrangements on the high seas.

88. As regards the establishment of marine protected areas as a tool to protect fragile ecosystems, one delegation said that the establishment of marine protected areas on the high seas would be in keeping with the general obligation imposed by the Convention on all States to protect and preserve the marine environment (article 192), as well as the specific obligation to adopt measures necessary to protect and preserve rare or fragile ecosystems (article 194 (5)). Others noted that States were obligated to cooperate under the provisions of the Convention on Biological Diversity in the conservation and sustainable use of biological diversity in areas beyond national jurisdiction (article 5).

89. Given the existing legal framework, a number of delegations said that the international community should at this point consider specific ocean governance options. One delegation suggested the adoption of an international treaty that would provide a mechanism for the establishment and regulation on an integrated basis of marine protected areas on the high seas and the seabed beyond the limits of national jurisdiction. The treaty could be modelled on the mechanism established in the Mediterranean region under the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean, which provided for the establishment of a list of specially protected areas of Mediterranean interest, including in the high seas. Some delegations suggested that the Consultative Process should establish a working group with a mandate to begin the preparation of a legal instrument. Other delegations stressed the need to balance the protection of high seas ecosystems with freedom of navigation and other freedoms associated with the high seas. Another delegation expressed the view that marine and coastal protected areas should be considered only as one of the essential tools and approaches in the conservation and sustainable use of marine and coastal biodiversity.

90. There were conflicting views regarding the legal status and the regime for marine scientific research relating to genetic resources of the deep seabed beyond national jurisdiction. A number of delegations emphasized that marine scientific research in the Area had, pursuant to article 143 of the Convention, to be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole. They said that all marine resources on the seabed beyond national jurisdiction, including the marine biodiversity, constituted the common heritage of mankind and should be dealt with within the legal regime for the Area in part XI of the Convention, given the symbiotic relationship of the biodiversity with the deep seabed and its resources.

General Assembly resolution 2749 (XXV) was mentioned in that regard. It was also pointed out that there were complementarities between the United Nations Convention on the Law of the Sea and the Convention on Biological Diversity, as both instruments emphasized the fair and equitable distribution of benefits from the resources, and therefore commercially oriented activities in the Area regarding biological diversity should be subject to those legal frameworks. Access to the biodiversity and genetic resources in the Area should be equitable and subject to the regime of marine scientific research. The derivatives of such research should be subject to benefit-sharing, on a non-discriminatory basis. Several delegations stressed that the improper use of intellectual property rights was prejudicial to countries that had not yet achieved the advanced level of technology necessary to carry out bioprospecting, depriving those countries' present and future generations of the benefits derived from such activity in the Area.

91. With reference to marine scientific research, some delegations pointed out that the United Nations Convention on the Law of the Sea contained only general principles set out in article 240 of the Convention, which did not include any conditions or restrictions on the freedom to conduct marine scientific research on the high seas. The Convention excluded marine living resources, such as fish, marine mammals, plants and other living organisms, from the legal regime of the Area and the regime of the common heritage of mankind did not apply to them. Consequently those resources were not owned until they were taken into possession. Despite the work being done by the International Seabed Authority to promote and encourage the conduct of marine scientific research in the Area and exploration of its resources with due regard for the protection of the marine environment, it was pointed out that no organization had, or should have, authority to regulate marine scientific research on the high seas.

92. Several delegations made reservations with regard to paragraphs 260 to 262 of the report of the Secretary-General on oceans and the law of the sea (A/59/62). Among other things, they pointed out that the Convention did not provide a definition of marine scientific research and did not mention bioprospecting. It was also noted that the distinction between pure and applied marine scientific research had never been accepted universally, since there was no perceivable difference in the activity or method.

93. The view was expressed by some delegations that there was a legal lacuna in respect of the regime governing deep sea biodiversity. While the Convention contained provisions for marine scientific research, including in areas beyond national jurisdiction, it was unclear as to bioprospecting. Given the symbiotic relationship between the biodiversity and the non-living resources of the Area and the fact that the Authority already had a clear mandate with respect to seabed minerals, it should be considered as a possible forum where matters related to bioprospecting of other resources could be examined. However, other delegations stated that a comprehensive study of the issues involved, including the nature of the resources and their potential use, had to be undertaken before any legal provisions or any other actions could be taken. One delegation emphasized that any bioprospecting governance mechanism should provide a transparent and simple process to allow for a vibrant biotechnology industry.

94. It was pointed out by some delegations that many developing countries did not have the capacity to engage in marine scientific research activities relating to

genetic resources beyond national jurisdiction. Such countries required assistance in training their nationals. The importance of nationals returning to their countries upon completion of any training undertaken in other countries was underlined.

Agenda item 6
Identification of issues for further consideration

95. The Co-Chairpersons pointed out that an extensive list of issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea had been proposed by delegations over the past four meetings of the Consultative Process, as reflected in the report of the fourth meeting (A/58/95, part C). Delegations were invited to submit proposals for additional issues in writing to the Co-Chairpersons. Additional issues proposed by delegations in writing during the fifth meeting are presented in paragraph 97 below.

Part C

Issues that could benefit from attention in future work of the General Assembly on oceans and the law of the sea

96. There was agreement that the list of topics identified at the four previous meetings of the Consultative Process remained valid as a list of topic eriting attention from the General Assembly.

97. Further topics that were suggested at the fifth meeting for identification were:

(a) Duties of the flag State in relation to social matters, safety of human life at sea and other related issues: problems and possible actions for solution;

(b) Genetic resources;

(c) The role of sustainable use of marine resources in food security;

(d) Undersea noise pollution: impacts on marine life.